

AO 245B (CASD) (Rev. 4/14) Judgment in a Criminal Case  
Sheet 1

# UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

v.

David Michael McElmurry -1

AMENDED

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: 10-cr-05096-JAH-1

Devin Jai Burstein

Defendant's Attorney

REGISTRATION NO. 24078298

☒ Correction of Sentence on Remand (Fed. R. Crim. P. 35); Previously Imposed Sentence is Hereby Set Aside and Vacated

THE DEFENDANT:

☒ pleaded guilty to count(s) One of the Superseding Information.

☐ was found guilty on count(s) \_\_\_\_\_

after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Count Number(s)</u>
18:2252(a)(2)	Distribution of Images of Minors Engaged in Sexually Explicit Conduct	1

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☒ Count(s) remaining is ☐ are ☒ dismissed on the motion of the United States.

☒ Assessment: \$100.00.

☒ No fine

☐ Forfeiture pursuant to order filed \_\_\_\_\_, included herein.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

October 9, 2015

Date of Imposition of Sentence

HON. JOHN A. HOUSTON

UNITED STATES DISTRICT JUDGE

10-cr-05096-JAH-1

DEFENDANT: David Michael McElmurry -1

CASE NUMBER: 10-cr-05096-JAH-1

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of Time served.

- ☐ Sentence imposed pursuant to Title 8 USC Section 1326(b).
- ☐ The court makes the following recommendations to the Bureau of Prisons:

- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_ .
- as notified by the United States Marshal.

- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before \_\_\_\_\_
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: David Michael McElmurry -1  
CASE NUMBER: 10-cr-05096-JAH-1

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
Five years.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

*For offenses committed on or after September 13, 1994:*

The defendant shall not illegally possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court. Testing requirements will not exceed submission of more than 4 drug tests per month during the term of supervision, unless otherwise ordered by court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- ☒ The defendant shall cooperate in the collection of a DNA sample from the defendant, pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000, pursuant to 18 USC sections 3563(a)(7) and 3583(d).
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. (Check if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution obligation, it is a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in this judgment.

The defendant must comply with the standard conditions that have been adopted by this court. The defendant shall also comply with any special conditions imposed.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

AO 245B (Rev. 1/09) Judgment in a Criminal Case  
Sheet 3 - Continued 2 - Supervised Release

DEFENDANT'S NAME: David Michael McElmurry

CASE NUMBER: 10-cr-05096-JAH-1

JUDGMENT PAGE: 4 of 5

### SPECIAL CONDITIONS OF SUPERVISION

X Submit your person, property, house, residence, vehicle, papers, computer, electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of probation/supervised release or unlawful conduct, and otherwise in the lawful discharge of the officer's duties. 18 U.S.C. §§ 3563 (b)(23); 3583 (d)(3).

X Not use or possess devices which can communicate data via modem or dedicated connection and may not have access to the Internet without prior approval from the court or the probation officer. The offender shall consent to the installation of systems that will enable the probation officer to monitor computer use on any computer owned or controlled by the offender. The offender shall pay for the cost of installation of the computer software.

X Not possess any materials such as videos, magazines, photographs, computer images or other matter that depicts "sexually explicit conduct" involving children, as defined by 18 U.S.C. § 2256(2); or any of the same material of actual sexually-explicit conduct by adults as provided in section 22 57 H and not patronize any place where such materials or entertainment are available.

X Not associate with, or have any contact with any sex offenders unless in an approved treatment or counseling setting.

X Not have, other than the incidental and non-substantial contact, with any child not his own, under the age of 18, unless in the presence of a supervising adult (who is aware of the defendant's deviant sexual behavior and conviction), and with the prior approval of the probation officer.

X Not accept or commence employment that involves substantial contact with children under the age of sixteen without prior approval of the probation officer, and employment should be subject to continuous review and assessment by the probation officer. This condition does not include any contact with a child of yours.

X Not loiter within 200 yards of a school, schoolyard, playground, park, amusement center/park, public swimming pool, arcade, daycare center, carnival, recreation venue, library and other places frequented by persons under the age of 18, without prior approval of the probation officer.

X Consent to installation of systems that will enable the probation officer to monitor computer use on any computer owned or controlled by the offender. The offender may be required to pay for the cost of installation of the computer software. The conditions regarding computer software and monitoring will also apply to any cell phone or any electronic device as well.

X Participate in a mental health program specifically related to sexual offender treatment. During the course of sexual offender treatment, the offender will be subject to periodic and random polygraph examinations as a therapeutic tool. The Court authorizes release of the pre-sentence report and available evaluations in connection to the sex offender treatment. The offender may be required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on ability to pay.

X You are to complete a sex offender evaluation,, which may include periodic psychological, physiological testing and completion of the A B E L assessment of the direction of the court or the probation officer, and that you will participate and successfully complete an approved state certified sex offender treatment program including compliance with treatment requirements of the program. You will allow reciprocal release of information between the probation officer and the treatment provider. You may be required to contribute to the cost of this treatment based upon your ability to pay as determined by the probation officer.

X Report all vehicles owned or operated, or in which you have an interest, to the probation officer.

X Consent to third party disclosure to any employer, or potential employer, concerning any restrictions that are imposed by the court.

X   Reside in a residence approved in advance by the probation officer, and any changes in residence shall be pre-approved by the probation officer.